1973 S.C. Op. Atty. Gen. 223 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3573, 1973 WL 21030

Office of the Attorney General

State of South Carolina
Opinion No. 3573
July 16, 1973

***1 The General Assembly, in the 1973–74 Appropriation Bill, included for funding purposes the State Board for Technical and Comprehensive Education and the Educational Television Commission as a part of the public school system of the State.**

Senatorial District No. 11
Pamplico, S. C.

You refer to Sections 65–1401, 65–1255 and 65–775.1 of the Code that levy certain taxes and provide for the disposition of the same for specific purposes.

The Budget and Control Board, in its budget for the 1973–74 year, inter alia, includes within the expenditures from the revenues above described an appropriation for the State Board for Technical and Comprehensive Education and the Educational Television Commission. You request the opinion of whether such appropriations are within the language of the statutes that originally earmarked the revenue.

The Appropriations Bill for 1973–74 suspends the statutes that earmarked the revenue from such sources in that the Bill provides that:
'All acts or parts of Acts inconsistent with any of the provisions of Parts I and II of this Act are hereby suspended for the fiscal year 1973–74. * * *.'

Section 1 of Part I of the Bill provides as follows:
'The revenues derived from the general retail sales tax, the soft drinks tax and the State's portion of revenue derived from the alcoholic liquors tax after deducting therefrom the additional tax for treatment of alcoholics and drug addicts shall be expended to cover appropriations herein made for the support of the public school system of the State only, and any amount of such appropriations in excess of these revenues shall be paid from other general fund revenues.'

The question therefore is whether the appropriations for these two commissions fall within the term 'the public school system of the State' and the general rule is stated in the case of *Yanow v. Seven Oaks Park, Inc.*, 11 N. J. 341, 94 A. 2d 484, 36 A. L. R. 2d 639, that public schools are:
'The weight of such authority declares that the phrase 'public schools' is not applied to the 'higher seminaries of learning' such as academies and colleges, but relates to general elementary (grammar) and intermediate (high) schools. In re Townsend, 195 N. Y. 214, 88 N. E. 41, 43–44, 22 LRA NS 194 (Ct App 1909); In re Opinion of the Justices, 214 Mass 599, 102 NE 464 (Sup Jud Ct 1913); nor is the phrase inclusive of 'technical and professional schools, and other institutions of learning which do not cover substantially the same field' as those designed for the compulsory education of children Commonwealth v. Connecticut Valley St. Ry Co. 196 Mass 309, 82 NE 19, 20, 21 (Sup Jud Ct 1907). Cf. Board Regents Normal School Dist. No. 3 v. Painter, 102 Mo 464, 14 SW 938, 940, 10 LRA 493 (Sup Ct Oklahoma v. Board of Education, 20 Okl 809, 95 P 429, 432 (Sup Ct 1908); Elsberry v. Seay, 83 Ala 614, 3 So 804, 806 (Sup Ct 1888). More recent authority is to the same effect. See Lynch v. Commissioner of Education, 317 Mass 73, 56 NE2d 896, 899 (Sup Jud Ct 1944); Rankin v. Love, Mont. 232 P2d 998, 1000–1001 (Sup Ct 1951); Pollitt v. Lewis, 269 Ky 680, 108 SW 2d 671, 113 ALR 691 (Ct App 1937).'

***2** An annotation with reference to the above is found in 113 A. L. R. beginning at page 697, however, it is there stated that no general definition can properly be formulated as to what constitutes a 'common' or 'public' school.

The legislative intent when enacting the original restrictions undoubtedly applied to the above described schools.

The 1951 Appropriations Bill that provided for the retail sales tax referred to the whole scheme as one '* * * to provide a more efficient school system * * *,' and designated certain items, none of which would include these commissions.

The 1973–74 Appropriations Bill has the effect, however, of modifying the term 'public school system' for purposes of funding only to include these commissions, and the General Assembly's power to amend the statute that originally restricted the use of the revenue cannot be questioned.
'* * *. Subject to constitutional limitations, the legislature has plenary power to amend statutes. * * *.' *Boatwright v. McElmurray*, 247 S. C. 199, 146 S. E. 2d 716.

Equally well settled is the principle that in construing a statute all provisions must be given force and effect, if consistent, and further the language of the statute as a whole is to be considered in the light of the legislative purpose. (For cases, see 17 S.C.D., Statutes, 205 and 206.)

The Budget and Control Board considered these commissions for appropriations purposes to be a part of the State's school system and the General Assembly adopted the inclusion in the Appropriations Bill. By amending the statutes a the Appropriations Bill that restricted the use of the revenue and thereafter including the appropriations for these commissions in the amended restrictions, the legislature has expressed its intent that the commissions, for appropriations purposes, be considered to be a part of the State's school system.

It is therefore the opinion of this office that the General Assembly, in the 1973–74 Appropriations Bill, included these commissions as a part of the 'public school system of the State' for purposes of funding the commissions.

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